IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.488 OF 1997

Gubbi Builders Pvt. Ltd. & Anr. ... Appellants

V/s

Mohamedali Ebhrahim & Anr. ... Respondents

CORAM : A.S. OKA, J.
DATED : 11TH MARCH,2005

P.C. :-

. Heard Shri Gorwadkar,the learned Advocate for Appellants. The Appellants-Original Defendants have taken an exception to the judgment and order dated 3rd February 2004 passed by the learned Judge of the City Civil Court,Mumbai by which Notice of Motion filed by the Respondent-Original Plaintiffs has been allowed and temporary injunction has been granted.

. The Respondents have filed the suit claiming that “the Defendants, their Directors, Officers,servants, agents and/or hirelings, claim through or under them be permanently restrained from(i) putting up any construction of any nature in the suit access,(ii) from blocking and/or causing any obstruction and/or keeping any building material and/or from storing of any articles and/or putting any gates in any manner and/or construction in the suit access,(iii) and/or digging up and/or disturbing in any manner the peaceful use and enjoyment of the suit access by the Plaintiffs, their family members, customers and/or

clients, being the approach road of the suit premises i.e. property bearing CTS No.324 situated at behind T.B.Hospital, Khar (West), Mumbai-400 052 duly shown in the plan annexed hereto and marked as Exhibit “A” in yellow colour boundary.

By the impugned judgment and order, the learned trial judge has granted all three prayers made in the Notice of Motion. The Appeal was admitted by this court on 13th August,1997. The relief of stay claimed in civil application was not granted and the application came to be rejected.

. I have heard Shri Gorwadkar,learned Advocate appearing for the Appellants. By the impugned order, the Appellants have been restrained from putting up any construction of any nature in the suit access and from keeping any building material and/or storing any articles in the suit access. The impugned order also prevents the Appellants from disturbing peaceful use of suit access by the Respondents. The order of temporary injunction granted by the trial court is operating for last more than 8 years.

. The perusal of the impugned judgment and order shows that the same is passed on prima facie consideration documentary evidence on record. The impugned judgment and order is discretionary in nature. I find no perversity in the impugned judgment and order and, therefore, no interference is called for.

. Accordingly, the Appeal is dismissed with no order as to costs.

. It is obvious that findings recorded in the impugned judgment and order are only tentative findings recorded for the limited purposes of considering the prayer for interim relief and the said findings are not binding on the trial court while deciding the suit finally.

. Parties to act on an authenticated copy of this order.

The trial court is directed to hear the suit as expeditiously as possible.

(A.S. OKA,J.)